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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 632

GRACE LINE INC.,

Petitioner,

against

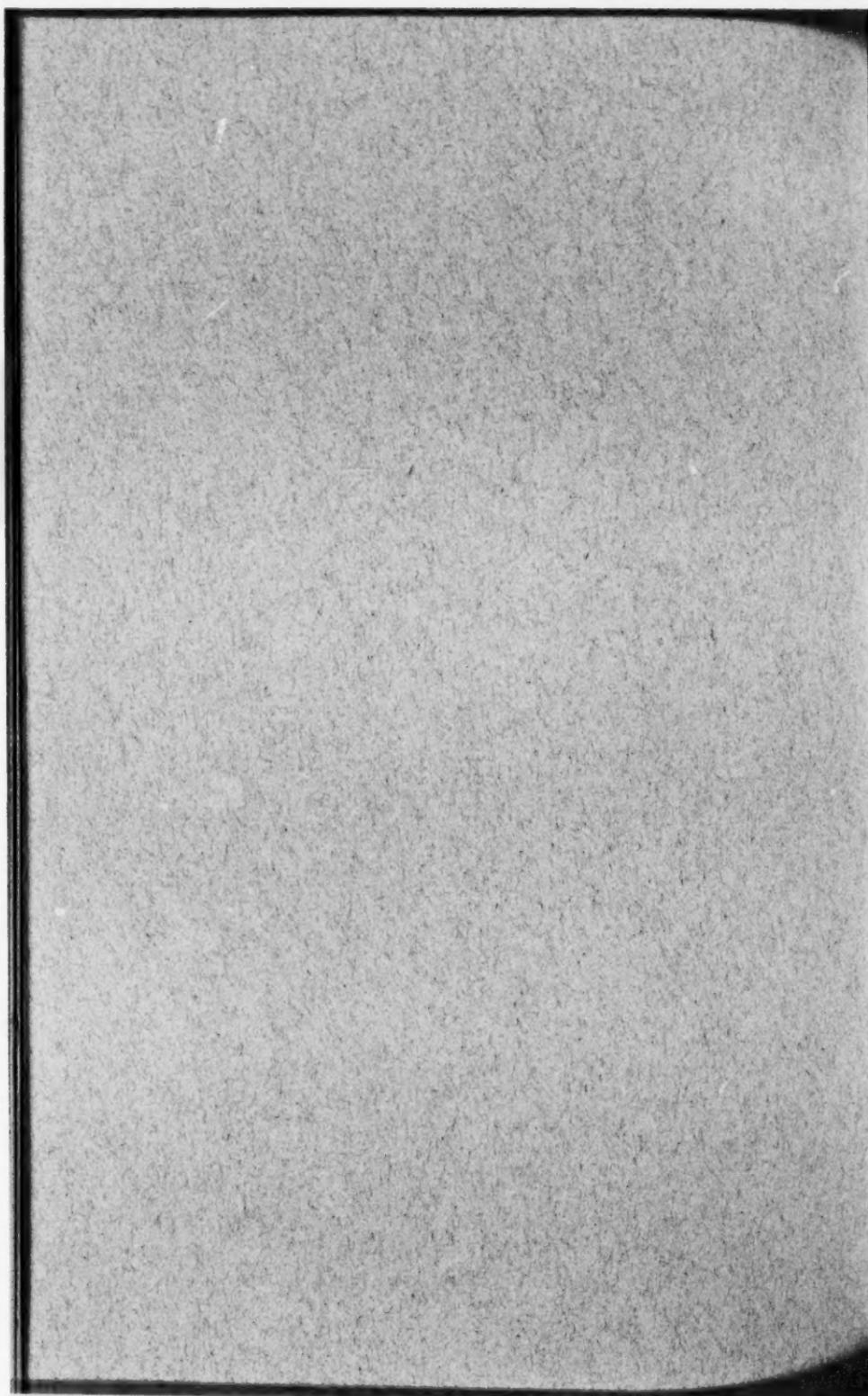
CUBA DISTILLING COMPANY, INC., and
DEFENSE SUPPLIES CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT
AND BRIEF.

ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.



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GRACE LINE INC.,
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CUBA DISTILLING COMPANY, INC., and
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Respondents. }
October Term, 1944.
No.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

The petitioner, Grace Line Inc., respectfully prays for a writ of certiorari to review the decree herein, in Admiralty, of the United States Circuit Court of Appeals for the Second Circuit entered July 28, 1944, which affirmed an interlocutory decree of the United States District Court for the Southern District of New York. R. 328.

Jurisdiction of this Court is provided by 28 U. S. C. §347(a).

THE SUBJECT MATTER.

This case arose from a wartime collision between the American steamer *Lara*, owned by the petitioner, and the American steamship *Cassimir*, owned by the respondent, Cuba Distilling Company, Inc., which occurred at night

at sea off the North Carolina coast on February 26, 1942. The *Lara* was damaged; the *Cassimir* sank and became a total loss. The *Cassimir*'s cargo, owned by the respondent, Defense Supplies Corporation, was also lost. The *Cassimir*'s watch officer and six other crew members lost their lives.

THE COLLISION.

The southbound *Lara*, a freighter loaded with general cargo, and the northbound *Cassimir*, a converted tanker laden with molasses, met at sea on the early morning of February 26, 1942. It was dark and there was practically no horizon. Both vessels were going at full speed, a combined twenty-one knot speed, and were proceeding "blacked out" and not displaying any lights whatever, in accordance with United States Naval orders. They were on general routes laid down by the Navy, such routes being designed for maximum protection in a submarine zone, it is to be assumed.

On this approach, nearly head on, they sighted each other ahead a short distance apart and took hard-over helm action which swung the vessels to the westward in the same direction, collision resulting between the stem and port bow of the *Lara* and the amidships starboard side of the *Cassimir*.

(Additional explanatory facts are: On sighting the *Lara* the *Cassimir* put her wheel hard left and switched her navigation lights on, but did not announce her rudder action with any signal; immediately thereafter, the *Lara* on sighting the *Cassimir* ahead, exhibiting white range lights and a green side light and headed across the *Lara*'s bow from port to starboard at a slight angle, put her rudder hard right. Before collision the *Lara* sounded the danger

signal and reversed her engines. Just before contact, the *Cassimir* blew several short blasts and the *Lara* switched on her navigation lights.)

The collision occurred only "in excess of one minute and not more than two" after the vessels sighted each other. R. 298; *Finding 20*.

THE PROCEEDINGS.

This cause embraces the consolidated limitation of liability proceedings of the respective vessel owners. Each owner filed claim for its damages in the other owner's proceeding. The owner of cargo on the *Cassimir* filed claim against the petitioner only. The estates of the deceased crew members of the *Cassimir* filed claims in the proceedings, but these claims were settled before trial by the *Cassimir* owner, under an agreement with the petitioner that such settlements would be considered as part of the damages of the *Cassimir*. A minor injury claim of a *Cassimir* crew member was included in this arrangement.

THE DECISIONS.

The District Court Decision: The petitioner contended in the District Court (and Circuit Court) that at sighting the vessels were *in extremis*, a situation produced by the absence of lights on the vessels, the weather, their courses and speeds. The petitioner asked that the "error *in extremis*" doctrine be applied and, in conformity with this principle, that errors, if any, in the vessels' maneuvers to escape collision should be excused. The District Court held that the collision was caused by the mutual fault of the vessels and that the vessels' actions were not errors *in extremis*. R. 299, 301; *Conclusions I, X and XI*.

The Circuit Court of Appeals' Decision: Only the petitioner appealed. The Circuit Court of Appeals held that the situation was one to which the "error *in extremis*" doctrine applied, as contended by the petitioner, but nevertheless affirmed the District Court decree, with opinion. R. 320-1. Petition for rehearing was denied. R. 327.

The Circuit Court held that the *Lara* in directing her course to her right acted with unsound judgment and that this error amounted to fault, on the Court's interpretation of the "error *in extremis*" doctrine.

We present in the Brief accompanying this petition our argument that the Circuit Court's interpretation of the "error *in extremis*" doctrine, a doctrine of importance in marine collision cases and especially so in cases involving wartime collisions, is erroneous in law and is in conflict with interpretations of the same doctrine made by this Court and by Circuit Courts in other Circuits.

THE QUESTIONS PRESENTED.

1. Where a vessel is found by a Court to be in an *in extremis* situation, due to suddenly meeting another vessel coming from the opposite direction while both are proceeding full speed without displaying any navigation lights in accordance with Navy orders, may liability be properly imposed on the vessel and her owner for the instantaneous maneuvers taken to escape collision which were not found to be clearly unskillful and were taken by the navigator in the exercise of his judgment as a seaman?

2. Where a vessel without blame on her part is suddenly faced with peril of collision with another and is in a situation held by a Court to fall within the *in extremis* doctrine, is it not immaterial in resolving the question

of liability of the vessel whether wise or unwise judgment was exercised by her navigator in acting to avoid the immediate danger of collision?

3. If the natural result of a Court's interpretation of the "error *in extremis*" doctrine is that only those actions done *in extremis* are to be excused which are judged *not* to be errors, is not such an interpretation a complete departure from the principle announced by this Court in *The City of Paris*, 76 U. S. 634, 638-9, that errors committed *in extremis* are not faults?

4. In considering the conduct of a mariner in a situation of collision peril produced by the extraordinary conditions of wartime navigation, should a Court subject to critical analysis the judgment exercised by the mariner or should it follow the direction of *The Oregon*, 158 U. S. 186, 204, that " * * * the judgment of a competent sailor *in extremis* cannot be impugned"?

5. When a colliding vessel without fault on her part has been suddenly thrust into peril of collision with another, may the vessel's possible responsibility turn on a Court's analysis of whether or not her navigator's immediate action to avoid collision demonstrates *some sound judgment and some clear thinking*?

6. Where two "blacked-out" steamers on a dark night were approaching each other head on, and steamer A wrongly turned left without signaling and switched on her lights and the other, B, not knowing A's mistake, immediately turned right, *in extremis*, having assumed that A would do the same: was it not error to impose partial fault on B for the collision of the vessels because the Court considered it poor judgment for B to turn right when A

was in a position headed to cross B's bow from port to starboard at an acute angle, as indicated by A's lights?

THE REASONS FOR ALLOWANCE OF THE WRIT.

1. The Circuit Court has interpreted an important doctrine of federal collision law in conflict with the interpretations of that doctrine in other Circuits and in this Court. Such interpretation is not an isolated instance. The Circuit Court here has reaffirmed an interpretation it earlier made which is different from that of this Court and the other Circuits.

2. A reversal of the Circuit Court's decision, will, it is believed, serve as an important guide to all admiralty Courts in which are pending collision cases of the same character as the instant case; serving as guide, also, to many owners of colliding vessels in adjusting without litigation the numerous collisions which have occurred in war.

The authoritative resolution of the question in the instant collision, one typical of many such occurrences incident to wartime ship handling, would helpfully define the proper limits of a principle important to the decision of many such wartime collisions.

WHEREFORE, the petitioner respectfully prays for the issuance of a writ of certiorari to review the said Circuit Court's decree.

GRACE LINE INC.,

By ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.

New York, N. Y., October 24, 1944.

